

Anthony E. Grabicki
RANDALL | DANSKIN
601 West Riverside Avenue, Suite 1500
Spokane, Washington 99201
509-747-2052
Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

No. 14-01499-FLK7

DEL RAY GEORGE,

TRUSTEE'S MOTION FOR: (1) APPROVAL OF SALE OF REAL PROPERTY BY PRIVATE SALE FREE AND CLEAR OF LIENS AND INTERESTS; (2) AUTHORIZATION FOR DISBURSEMENT OF SALES PROCEEDS; (3) SURCHARGE OR CARVEOUT OF ADMINISTRATIVE EXPENSES AGAINST SECURED CREDITORS AND NOTICE THEREOF

COMES NOW, the Chapter 7 trustee appointed in the above-entitled case, ANTHONY E. GRABICKI, by and through his undersigned attorneys, and hereby moves the court for an order authorizing the sale of certain real property by private sale free and clear of all liens and encumbrances, authorizing disbursement of the sales proceeds and authorizing the surcharge or carveout of administrative expenses against certain secured creditors based upon the following:

1. Sale of Real Property by Private Sale Free and Clear of Liens and Interests:

The above debtor filed his Chapter 7 bankruptcy petition on April 21, 2014. An asset of this

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REAL PROPERTY - 1 -**

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1 bankruptcy estate is the debtor's office building located at 712 W. Columbia Dr. in Kennewick,
2 Washington, which the trustee intends to sell to purchaser SMART CAR LLC or its assignees
3 for a total cash price of \$115,000 to be paid in full at the time of closing. The trustee believes
4 the fair market value of the real property is equivalent to this sales price. The property has
5 been listed for sale since August 5, 2014, and this is the best offer received to date. The legal
6 description of the property is as follows:
7
8

9 Lot 9, DELMAR'S ADDITION TO KENNEWICK, according to
10 the Plat thereof recorded in Volume 3 of Plats, Page 11, records of
Benton County, Washington.

11 The terms of the sale include \$5,000.00 in earnest money and provisions that the closing of the
12 sale is specifically contingent upon the notice and hearing requirements set forth in the U.S.
13 Bankruptcy Code and Rules and the entry of an order approving the sale. The sale will be
14 closed on or about April 15, 2015, and the trustee will use Macon Brothers Auctioneers to sell
15 the equipment and personal property located in the building prior to the closing. The earnest
16 money paid by the purchaser in the amount of \$5,000.00 shall be considered as total liquidated
17 damages to the seller in the event the purchaser fails to close. The purchaser shall pay its own
18 traditional costs of closing as required by the Commercial and Investment Real Estate Purchase
19 and Sale Agreement. The purchaser is buying the property on as "AS IS/WHERE IS" basis.
20 The purchaser further understands that there are absolutely no warranties of any kind, nature, or
21 description with respect to the property and its contents by the trustee. The only remaining
22 contingencies in the Sale Agreement include inspection of the property by the purchaser
23 pursuant to the Agreement and notice to creditors in the bankruptcy proceeding and bankruptcy
24 court approval. The sale is scheduled to close on or about April 15, 2015. The real property

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1 described above will be sold as provided in the Commercial and Investment Real Estate
2 Purchase and Sale Agreement and Addenda free and clear of all liens and interests that are not
3 being paid at closing pursuant to 11 U.S.C. Section 363(f)(1), (2), (3), (4), and (5) with any and
4 all unpaid valid liens and encumbrances attaching to the net sales proceeds in their name, rank,
5 validity, and priority unless otherwise provided below.
6

7 **2. Liens Against the Property:** The existing liens presently against the property
8 include real estate taxes on the property owed to Benton County in the approximate amount of
9 \$5,561 (plus any penalties and interest) and any unpaid personal property taxes which will be
10 paid in full at closing. The Internal Revenue Service holds two federal tax liens against the
11 property recorded in 2012 in the respective amounts of \$119,460.54 and \$29,002.60. The
12 Internal Revenue Service has agreed to waive and release its liens on the sales proceeds to the
13 extent necessary to allow for the carveout and surcharge of sales proceeds that is provided for
14 below. All remaining net proceeds will then be paid to the IRS from this sale. The debtor's ex-
15 wife, Christina Neighbours, also holds a marital lien against the property in the amount of
16 \$100,000 and she has agreed to waive her lien against this property so that the IRS lien can be
17 paid and she will thus not be paid anything from the closing. The Alaska USA Federal Credit
18 Union holds the most junior lien against the property in the form of a judgment lien in the
19 amount of \$15,001.21 recorded on August 28, 2013. This judgment lien does not attach to any
20 of the equity in the property in light of the previously described liens against the property. The
21 Alaska USA Credit Union will thus be paid nothing from the sales proceeds of this sale.
22

23 **3. Disbursement of Sales Proceeds:** Cascade Title Company has been appointed
24 by the parties as closing agent to proceed with this real estate transaction. The closing agent
25

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will be authorized by order of the court to prepare all documents and to make all disbursements authorized by the Commercial and Investment Real Estate Purchase and Sale Agreement including normal and ordinary costs of sale including but not limited to, a closing agent's fee, an amount not to exceed 6% of the sales price as the realtor's commission, title insurance premium, accrued real estate and personal property taxes, recording fees, any sewer, paving or other assessments of record against the property including unpaid homeowners dues, and any other charges or expenses required to be paid pursuant to the terms of the Commercial and Investment Real Estate Purchase and Sale Agreement and any other normal and ordinary costs of sale. The closing agent will also be authorized to disburse \$5,000 to the trustee for the benefit of unsecured creditors and an amount not to exceed \$3,000 to the trustee to cover the trustee's attorney's fees and costs associated with the sale and the sum of \$9,000 to the trustee to pay the trustee's commission authorized by 11 U.S.C. 326 as a surcharge or carveout agreed to by the Internal Revenue Service and Christina Neighbour under 11 U.S.C. §506(c). The trustee estimates that net proceeds from the sale payable to the Internal Revenue Service will be approximately \$80,000.

4. Motion for Surcharge or Carveout of Sales Proceeds: The trustee also moves the court for an order pursuant to 11 U.S.C. 506(c) and pursuant to the agreement between the trustee, the Internal Revenue Service, and Christina Neighbour providing for a carveout of the sales proceeds with all sales costs described above as well as the trustee's administrative expenses directly related to the sale including \$9,000 as the trustee's commission authorized under 11 U.S.C. 326, an amount not to exceed \$3,000 for the trustee's attorneys' fees and costs associated with this sale, and the sum of \$5,000 for the benefit of unsecured creditors. The

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surcharge and carveout includes all normal sales costs described above and the trustee's commission and attorneys' fees and costs incurred in connection with this sale as set forth above which will be disbursed by the closing agent to the trustee from funds that would otherwise be paid to secured creditor Internal Revenue Service in this case. The trustee is required to produce sufficient funds from any bankruptcy sale to cover his own fees and expenses and to produce substantial funds for unsecured creditors and the carveout and surcharge described above achieves this purpose.

5. **10 Day Stay Period Pursuant to FRBP 6004(g)**: The trustee also moves the court for an order waiving the ten (10) day stay period set forth in FRBP 6004(g) so that the order approving the sale can be entered prior to the closing date of February 15, 2015.

6. Copy of Sale Offer: A copy of the Commercial and Investment Real Estate Purchase and Sale Agreement and Addenda for the above-described sale will be provided to any party that requests a copy in writing prior to the expiration of the notice period set forth above. Any party having any questions concerning the private sale of the real property described in this motion should contact the undersigned attorney for the trustee prior to the expiration of the notice period set forth below.

NOTICE

YOU ARE FINALLY NOTIFIED that if you wish to object to the above-described sale of real property by private sale free and clear of liens and interests, disbursement of sales proceeds, surcharge and/or carveout of sales proceeds, and other relief set forth above, you may do so by filing with the Clerk of the Court at Room 321, P.O. Box 2164, W. 904 Riverside Avenue, Spokane, Washington, 99210, a written objection and request for hearing which states

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with particularity the grounds for your objection **AND** you must also serve a copy of the same on the undersigned attorney **on or before the 23rd day of February, 2015**, in order for your objection to be considered by the court at any hearing. Should you fail to object within the time and in the manner set forth above, the court may approve the above-described motion for sale of real property by private sale free and clear of liens and interests, disbursement of sales proceeds, surcharge and/or carveout of sales proceeds, and other relief requested above without any further notice of hearing.

DATED this 29th day of January, 2015.

RANDALL | DANSKIN

By /s/ Anthony E. Grabicki
Anthony E. Grabicki, WSBA #9119
Attorneys for Trustee

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